

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT JAHODA,

Plaintiff,

v.

15cv1000

LEAD CASE

ELECTRONICALLY FILED

FOOT LOCKER, INC.,

Defendant.

MICHELLE SIPE,

Plaintiff,

v.

15cv1037

MEMBER CASE

TOYS "R" US-DELAWARE, INC.,

Defendant.

ACCESS NOW, INC.

a not-for-profit corporation, ET AL.

Plaintiffs,

v.

15cv1626

MEMBER CASE

ACE HARDWARE CORPORATION,

Defendant.

MICHELLE SIPE, ET AL.,

Plaintiffs,

v.

15cv1630

MEMBER CASE

FRY'S ELECTRONICS, INC.,

Defendant.

MICHELLE SIPE, ET AL.,

Plaintiffs,

v.

ADIDAS AMERICA, INC.,

Defendant.

15cv1631

MEMBER CASE

MICHELLE SIPE, ET AL.,

Plaintiffs,

v.

AEROPOSTALE, INC.,

Defendant.

15cv1640

MEMBER CASE

MICHELLE SIPE, ET AL.,

Plaintiffs,

v.

PATAGONIA WORKS, INC.,

Defendant.

15cv1641

MEMBER CASE

ORDER OF COURT

Pending before the Court is Defendants' Notice of Motion and Motion for a Jury Trial (doc. no. 63) with supporting brief (doc. no. 64). In cases nos. 15cv1037, 15cv1626, 15cv1630, 15cv1631, 15cv1640, and 15cv 1641, Defendants therein requested a jury trial in their Answers to numerous Complaints, alleging that the website of these defendants violated the Americans

with Disabilities Act (ADA), and defense counsel at the Initial Case Management Conference of January 29, 2016, asserted a right to a jury trial in said cases. The Court ordered briefing on this issue. See doc. no. 54.

In defendants' combined Motion and supporting brief (doc. nos. 63 and 64), defendants seem to concede that they do not have a constitutional right, nor a statutory right, to a jury trial in these ADA cases, but now argue that Rule 39(c) of the Federal Rule of Civil Procedure should be applied to these cases.

Defendants' brief (doc. no. 64 @ 4) states as follows:

In an action not triable of right by a jury, the court, on motion or on its own:

- (1) may try any issue with an advisory jury; or
- (2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial.

Therefore, this Court has full discretion to order any disputed issues of fact to be tried by a jury to assist it in making its ruling. *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 249 (3d. Cir. 2013) ("District courts are free to use advisory juries, even absent the parties' consent."). "District courts are also free to reject their verdicts, as long as doing so is not independently erroneous." *Id.*; *Wilson v. Prasse*, 463 F.2d 109, 116 (3d. Cir. 1972).

Since plaintiffs have not sought a jury trial, and have not consented to a jury trial under the above-quoted Rule 39(c)(2), the issue before the Court is whether to impanel an advisory jury or juries. The Court declines to do so, because in these cases, the appointment of one advisory jury, or a separate advisory jury for each case, would be inconsistent with the requirements of Rule 1 of the Federal Rules of Civil Procedure, which states that these Rules "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." An advisory jury or juries would double the trial time at least, and

burden the parties with the additional costs of researching, drafting, and finalizing jury instructions and verdict slip(s), and the other expensive pretrial jury requirements in this District and, based upon this Court's extensive trial experience as a trial lawyer and trial judge, would double or triple the total trial time. Such a procedure also would increase the costs to the taxpayers related to this jury (or juries).

SO ORDERED, this 12th day of February, 2015

s/ Arthur J. Schwab

Arthur J. Schwab
United States District Court Judge

cc: All counsel of record